

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

JARED MAIRS, individually and on
behalf of all others similarly situated

Plaintiff,

v.

ALLSUP, LLC and ALLSUP
EMPLOYMENT SERVICES, LLC

Defendants.

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Case No. 3:19-cv-01086-NJR-RJD

DEFENDANTS' MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants, by their attorneys, move to dismiss Plaintiff's complaint with prejudice. In support of their motion, Defendants state:

1. In his class-action complaint, Plaintiff, Jared Mairs ("Mairs"), alleges that Defendant Allsup Employment Services, LLC ("AES") made a pre-recorded call to him pursuant to a contract with the Social Security Administration. As a result, Mairs alleges that AES and its parent company, Defendant Allsup, LLC ("Allsup"), are liable under the Telephone Consumer Protection Act ("TCPA").

2. Mairs's complaint should be dismissed. In rulings that the Seventh Circuit prohibits Mairs from challenging here, the Federal Communications Commission ("FCC") has ruled that the TCPA does not apply where government contractors make pre-recorded calls about employment-related services for the Social Security Administration. In his complaint, Mairs makes several efforts to get around this ruling. But, in so doing, Mairs ignores the language of the FCC's ruling, the policy behind that ruling, and the content and context of the challenged calls. Moreover, even if AES' calls were actionable (which they are not), Allsup would not be

liable for those calls. Mairs concedes that Allsup did not make the calls. And Mairs offers no basis for holding Allsup vicariously liable for those calls.

3. Defendants contemporaneously file their memorandum in support of this motion.

WHEREFORE, pursuant to Rule 12(b)(6), Defendants respectfully request that this Court dismiss Mairs's complaint with prejudice, and grant any additional relief that this Court deems appropriate.

Dated: November 26, 2019

Respectfully Submitted,

**ALLSUP, LLC and ALLSUP
EMPLOYMENT SERVICES,
LLC, Defendants**

By: /s/ Scott J. Helfand
One of Their Attorneys

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 26th day of November 2019, a copy of the foregoing document was filed with the Clerk of the Court using the CM/ECF system, which sent notifications of such filing to all counsel of record.

/s/ Scott J. Helfand